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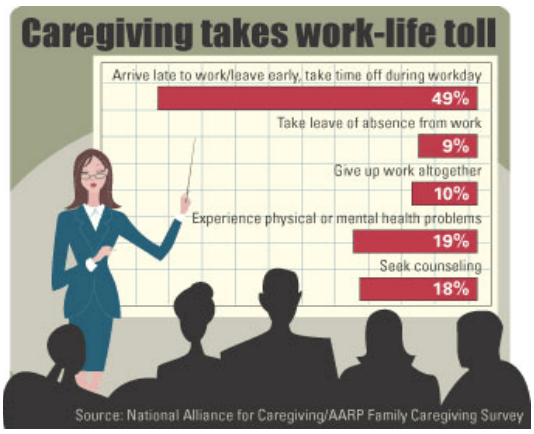
SUPREME COURT CASES

Nevada Dep't of Human Resources v. Hibbs, 2003 U.S. LEXIS 4272 (May 27, 2003). Hibbs, a state employee, requested twelve weeks of FMLA leave to be used intermittently between May and December to care for his ailing wife. In June and September he requested and granted a total of 380 hours of paid catastrophic leave. The last day Hibbs reported for work was August 5. On October 12, the department informed him that his FMLA leave was exhausted and later terminated him. Hibbs sued for damages and injunctive and declaratory relief under the FMLA.

The Court, upholding a Ninth Circuit decision, held that the state did not have Eleventh Amendment immunity from suit. Unlike cases decided by applying the rational basis test to age or disability based distinctions, gender based discrimination is subject to heightened scrutiny. Congress, in enacting the FMLA, had before it a long history of sex based discrimination with respect to leave benefits by states (women are the family caregivers and men don't have domestic responsibilities). Congress has power under § 5 of the Fourteenth Amendment to enact prophylactic leglslation that proscribes facially constitutional conduct in order to prevent and deter unconstitutional conduct. The FMLA is congruent and proportional to the targeted violation, remedies previous legislative failures to correct the problem, is narrowly targeted at only one aspect of the employment relationship (the fault line between work and family), and has significant limitations in the legislation.



Inyo County, California v. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, 123 S.Ct. 1887 (2003). The district attorney obtained a state search (which was executed) for on-reservation casino employment records involving alleged off-reservation welfare fraud by tribal members. The tribe sued in federal court, seeking injunctive and declaratory relief that it was immune from state processes and state law was preempted, as well as damages under § 1983.

The Court held that the tribe could not sue under § 1983 to vindicate its claimed tribal sovereign immunity since the statute "was designed to secure private rights against government encroachment, not to advance a sovereign's prerogative to withhold evidence relevant to a criminal investigation." The Court remanded the decaratory and injunctive relief claims

forconsideration of "what prescription of federal common law enables a tribe to maintain an action establishing its sovereign right to be free from state criminal processes."

City of Los Angeles v. David, 123 S. Ct. 1895 (2003). David disputed a charge of illegal parking, the towing of his car, and payment of $134.50 to recover it, and filed a § 1983 action because the hearing on the dispute did not occur until 27 days after the car was towed. The Ninth Circuit held that the hearing should have occurred within 48 hours to fives days, at most. In a per curiam reversal, the Court held there was no deprivation of due process because 1) the deprivation of money could be compensated with an interest payment, 2) a 30 day delay (common in administrative and judicial proceedings) in presenting evidence on a straightforward parking ticket was not likely to spawn factual errors, and 3) the burden on the government of scheduling some 1,000 hearings each year within 48 hours (or 5 days) is too great and affects its ability to protect the integrity of the system and adequately prepare cases.

Chavez v. Matinez, 2003 U.S. LEXIS 4274 (May 27, 2003). Martinez had been shot in an altercation with police and, while lying wounded in the hospital emergency room, was questioned by officer Chavez. Even though no charges were filed, Martin claimed a violation of his Fifth Amendment right against self-incrimination. The Court reversed the Ninth Circuit.

"An officer is entitled to qualified immunity if his alleged conduct did not violate a constitutional right. The text of the Fifth Amendment's Self-Incrimination Clause cannot support the Ninth Circuit's view that mere compulsive questioning violates the Constitution. A 'criminal case' at the very least requires the initiation of legal proceedings, and police questioning does not constitute such a case. Statements compelled by police interrogation may not be used against a defendant in a criminal case, but it is not until such use that the Self-Incrimination Clause is violated.. Martinez was never made to be a 'witness' against himself because his statements were never admitted as testimony against him in a criminal case. Nor was he ever placed under oath and exposed to "'the cruel dilemma of self-accusation, perjury or contempt.'"

"The Ninth Circuit's approach is also irreconcilable with this Court's case law. The government may compel witnesses to testify at trial or before a grand jury, on pain of contempt, so long as the witness is not the target of the criminal case in which he testifies, and this court has long permitted the compulsion of incriminating testimony so long as the statements (or evidence derived from them) cannot be used against the speaker in a criminal case. Martinez was no more compelled in a criminal case to be a witness against himself than an immunized witness forced to testify on pain of contempt. That an immunized witness knows that his statements may not be used against him, while Martinez likely did not, does not make the immunized witness' statements any less compelled and lends no support to the Ninth Circuit's conclusion that coercive police interrogations alone violate the Fifth Amendment. Moreover, those subjected to coercive interrogations have an automatic protection from the use of their involuntary statements in any subsequent

criminal trial, which is coextensive with the use and derivative use immunity mandated by *Kastigar*."

"The fact that the Court has permitted the Fifth Amendment privilege to be asserted in noncriminal cases does not alter the conclusion in this case. Judicially created prophylactic rules–such as the rule allowing a witness to insist on an immunity agreement before being compelled to give testimony in noncriminal cases, and the exclusionary rule– are designed to safeguard the core constitutional right protected by the Self-Incrimination Clause. They do not extend the scope of that right itself, just as violations of such rules do not violate a person's constitutional rights. Accordingly, Chavez's failure to read *Miranda* warnings to Martinez did not violate Martinez's constitutional rights and cannot be grounds for a § 1983 action. And the absence of a 'criminal case' in which Martinez was compelled to be a 'witness' against himself defeats his core Fifth Amendment claim."

Texas Transportation Institute Urban Mobility Study

Averages in the 75 study areas illustrate the growing severity of the triple threat faced by America's travelers.

The time penalty for peak period travelers has jumped from 16 hours per year in 1982 to 62 hours in 2000.

The period of time when travelers might experience congestion has increased from 4.5 hours in 1982 to 7 hours in 2000.

The volume of roadways where travel is congested has grown from 34 percent in 1982 to 58 percent in 2000

The worst nightmare for California Governor Gray Davis is a low-tax neighbor. The exodus to Reno and Vegas began years ago. It's certain to grow into a stampede if (make that when) Governor davis punts responsibility for his state's $37 billion budget deficit onto California wage-earners, investors and business owners–something the Democrat vows he'll do."

"I like Reno's chances in this scenario. Life hasn't been easy for Nevada's second banana, so it tries harder. Home to the University of Nevada, which places more emphasis on science than on basketball, and situated a mere 45 minutes by car from lovely Lake Tahoe (the same by plane from San Francisco), affordable Reno is well positioned for a run of good luck. Buy land in the southwest quadrant." Rich Karlgaard, *Digital Rules*, Forbes (May 2003).

NEVADA CASES

White v. Continental Ins. Co., 119 Nev. Adv. Op. 12 (April 3, 2003). White collided with a City of Reno street sweeper and settled his claim against the City for

$45,000. He then sought to recover under an uninsured or underinsured provision from his carrier. The court held the City was a self-insured entity and Continental had no obligation to pay under the uninsured provision.

DiMatino v. Eighth Judicial Dist. Court, 119 Nev. Adv. Op. 13 (April 16, 2003). Interpreting SCR 178, the court held the rule "does not mandate complete disqualification of an attorney who may be called as a witness; by its plain terms, SCR 178 simply prohibits the attorney from appearing as trial counsel."

Kornton v. Conrad, Inc., 119 Nev. Adv. Op. 14 (April 28, 2003). An employer was not vicariously liable for an employee's driving accident while commuting to a worksite.

White Cap Insus., Inc. v. Ruppert, 119 Nev. Adv. Op. 15 (April 28, 2003). The terms of a noncompetition agreement required affirmative action on Ruppert's part. Mere non-action was not a breach of the agreement.

Barnier v. State, 119 Nev. Adv. Op. 16 (April 28, 2003). Barnier was parked with the keys in the ignition and the engine off when he was arrested for DUI. The court reversed because the jury instruction omitted several *Rogers* factors for determining physical control of the vehicle (engine running, trying to or did move the vehicle, and drove vehicle to location where apprehended).

Sanders v. State, 119 Nev. Adv. Op. 17 (April 28, 2003). Sanders owed over $10,000 in child support arrearages prior to serving a prison term. He was subsequently convicted felony nonsupport. The court held that affirmative defense language of NRS 201.051 (unemployed "without good cause") was not unconstitutionally vague and, as an affirmative defense, did not encourage arbitrary enforcement. The court also held that adjudicated arrearages shold be counted in determining the $10,000 prosecution threshold and that a jury can consider whether incarceration is a valid affirmative defense in a particular case (weighing such factors as "whether the obligor has other assets or income, the obligor's past and future ability to earn income, the length of the obligor's incarceration, and the best interest of the child").

California Commercial Enters v. Amedeo Vegas I, Inc., 119 Nev. Adv. Op. 18 (April 28, 2003). A mechanics lien is not available for unpaid extra work costs that have not been addressed in a contract (in this case, delay and disruption damages).

Sandoval v. Board of Regents of the Univ. and Community College Sys of Nevada, 119 Nev. Adv. Op. 19 (May 2, 2003). Regents twice discussed details of an NDI report on a raid of a UNLV dormitory in a committee and a board meeting under general agenda topics that did not mention the report.

"By not requiring strict compliance with agenda requirement, the 'clear and complete' standard would be rendered meaningless because the discussion at a public meeting could easily exceed the scope of a stated agenda topic, thereby circumventing the notice requirement. Accordingly, we reject the 'germane standard,' as it is more lenient that the Legislature intended. Instead, we conclude that the plain language of NRS

241.020(2)(c)(1) requires that discussion at public meeting cannot exceed the scope of clearly and completely stated agenda topic."

A First Amendment challenge was also rejected: "The regents are free to speak on any topic of their choosing, provided they place the topic on the agenda."

Nevada Contract Servs, Inc. v. Squirrel Cos., Inc., 119 Nev. Adv. Op. 20 (May 14, 2003). In a dispute over the functioning of a liquor dispensing machine, the court held that in a breach of warranty claim "it is too burdensome to require a plaintiff to prove precisely why a product does not work."

Milton v. Nevada Dep't of Prisons, 119 Nev. Adv. Op. 21 (May 14, 2003). The court rejected Milton's attempt to have the prison mailbox rule applied to his negligence action with a two year statute of limitations, while limiting application of the rule to "very short deadlines, *i.e.*, thirty days."

State v. Allen, 119 Nev. Adv. Op. 22 (May 21, 2003). In an en banc reconsideration of this case involving "whether a search warrant that did not contain a statement of probable cause was nevertheless valid because it complied with the 'incorporation by reference ' requirements of NRS 179.045(5)(b)." The court concluded that a "search warrant that is neither supported by a sealed affidavit nor issued [by telephonic communication] must contain a probable cause statement or have the probable cause statement physically attached to the search warrant." Simply referring to an unsealed affidavit or attempting to incorporate it by reference in the warrant is insufficient. Because NRS 145.045(5) was clear, and the deputy sheriff did not follow its provisions, the *Leon* good faith exception did not apply and suppression was required.

McCarthy Hearing Transcripts at http://www.access.gpo.gov/congress/senate/senate12cp107.html

"After the scarecrow gets a brain, he states the Pythagorean Theorem. However, he incorrectly says it applies to an isosceles triangle when it applies to a right triangle. He also not only gets the wrong kind of triangle, but he gets the equation wrong. He says "the sum of the square roots of any two sides...is equal to the square root of the remaining side." But it is really the sum of the SQUARES (not square roots). And it is not the sum of ANY two sides. It is the sum of the two sides that form the right angle. No doubt the Wizard got that brain in the clearance aisle." The 20 Most Mistake Filled Movies. www.moviemistakes.com

NINTH CIRCUIT CASES

Hobler v. Brueher, No. 00-35589 (9th Cir. April 8, 2003). "This appeal tests whether an elected county prosecutor must retain the at-will confidential secretaries hired by the predecessor he defeated, who supported the predecessor politically." "The general rule in our sister circuits, which we adopt, is that a confidential secretary to a policymaker may, consistent with the First Amendment, be replaced by the policymaker's successor for political reasons." "This case suggests a few factors that bear on the question, but neither a multifactor 'test' nor an exhaustive and exclusive list of factors is appropriate. Among the factors that suggest themselves in this case are: (1) how closely does the

person work with the official? (2) does the person's job require personal loyalty to the official? (3) is the office so small that the relationship is necessarily close, or so large that it isn't? (4) does the official rely on the person for information about delicate matters within the office or communications with the public or other officials on behalf of the official? (5) would the official's ability to manage relationships with office staff or persons with whom the office deals be impaired if the persons are politically loyal to an adversary or not loyal to him? (6) were the dismissals of only one or a small number of employees who worked most closely with the policymaker, or were they wholesale dismissals? (7) do the individuals speak to other employees, the public and to other policymakers on behalf of the official? In other cases, other factors may enter the balance."

United States v. Fernandes-Castillo, No. 01-30398 (9th Cir. April 8, 2003). "We are asked to decide whether an officer had a reasonable suspicion that the driver of a car was impaired, justifying an investigatory traffic stop of that car, where: (1) the vehicle had been reported as driving erratically; (2) the officer who stopped the vehicle knew the source of the report; (3) the report described the vehicle in detail, noting the car's color, make and model, and state license plate; (4) the report was made contemporaneously with the source's observations of the erratic driving; (5) the officer discovered the car in the area where the report indicated that the car would likely be found; (6) the officer noticed that the driver was sitting very close to the steering wheel, a behavior the officer knew was typical of impaired drivers; and (7) the officer corroborated the report of erratic driving by observing the car weave within its lane. Given the totality of these circumstances, we hold that the district court correctly found, after an evidentiary hearing, the existence of a reasonable suspicion that the operator of the car was impaired and properly held that the investigatory stop of the vehicle was constitutional."

Kaplan v. City of North Las Vegas, No. 02-16048 (9th Cir. April 1, 2003). Kaplan, a deputy marshal, injured his hand during a police training exercise, eventually was unable to hold a gun, use handcuffs, or restrain prisoners and was terminated. The court held Kaplan could not perform essential job functions and so was not a qualified individual under the ADA.

Also, the panel dealt with an issue of first impression in the circuit: "Having carefully considered the arguments for and against entitling 'regarded as' plaintiffs to reasonable accommodations, we recognize that it is not an easy question because of the language of the statute, but we hold that there is no duty to accommodate an employee in an 'as regarded' case. Because Kaplan is not actually disabled, the City did not have a duty to accommodate him."

Koerner v. Grigas, No. 01-15345 (9th Cir. April 28, 2003). Koerner was convicted of the murder of his ex-wife in 1986, filed three state post-conviction proceedings over the years in state court, and was denied relief on a habeas petition in federal district court. The Ninth Circuit reversed: "As in *Valerio*, it is impossible to tell from the Nevada Supreme Court's opinion here which issues were barred as previously litigated, and which were barred as procedurally defaulted. We need not expand the rule of *Valerio* to hold that Koerner's case falls within it. "By failing to

specify which claims were barred for which reasons, the Nevada Supreme Court 'did not clearly and expressly rely on an independent and adequate state ground.' " *Valerio*, 306 F.3d at 774–75 (quoting *Coleman*, 501 U.S. at 735). Koerner's direct appeal claim is not procedurally defaulted."

Hills v. Scottsdale Unified School Dist., No. 01-17518 (9th Cir. May 22, 2003). The district allowed distribution of materials by nonprofit and government groups, but prohibited any materials of a commercial, political, or religious nature. Hills' pamphlet for a summer camp included classes on Bible heroes and Bible tales.

The panel held the distribution program constituted a limited public forum and applied a viewpoint discrimination analysis: "*Good News Club* teaches that speech discussing otherwise permissible subjects cannot be excluded from a limited public forum simply because the subject is discussed from a religious viewpoint. 533 U.S. at 112. The District's exclusion of Hills's summer camp brochure because it offered Bible classes from a Christian perspective does just that, and therefore constitutes impermissible viewpoint discrimination."

"If an organization proposes to advertise an otherwise permissible type of extra-curricular event, it must be allowed to do so, even if the event is obviously cast from a particular religious viewpoint (so long as all such viewpoints are treated even-handedly). *Prince* so indicated by requiring the school district in that case to permit announcement of the World Changers Club meetings during school time, using school facilities. 303 F.3d at 1094. Thus, for example, we believe the District's policy could validly exclude a 'religious tract' aimed at converting students to a particular belief, because the school's forum was never opened for pure discourse. We doubt, however, that the policy could exclude advertisements of a local Passover Seder or a Christmas performance of Handel's Messiah, as these are extra-curricular activities that would no doubt be 'of interest' to many schoolchildren."

Webb v. Sloan, No. 01-16855 (9th Cir. May 29, 2003). "Plaintiff David Q. Webb obtained an $80,000 jury verdict in this civil rights action against Carson City, Nevada, after he was prosecuted without probable cause for obstruction of justice. His lawyers were awarded fees. In this opinion, we resolve two appeals: Defendant Carson City's appeal from the adverse verdict, and the separate appeal resulting from a challenge to the fee award by Plaintiff's counsel. In Carson City's appeal, we hold that deputy district attorneys are final policymakers in Nevada for purposes of establishing municipal liability under 42 U.S.C. § 1983. As a result of our holding, we affirm the jury's verdict."

"As previously stated, the Nevada legislature confers the same final policymaking authority on deputy district attorneys. Nev. Rev. Stat. § 252.070(1). The principal does not delegate constrained discretion to a deputy upon appointment. Rather, the legislature states that, upon appointment, deputies may transact all official duties *to the same extent as* their principals. We are mindful that the Nevada statutory text is permissive, not mandatory: Deputies *may* transact official business to the same extent as their principals.

Conceivably, the principal prosecutor could constrain that authority. That possibility does not change our analysis, because Carson City presented no evidence that its principal district attorney actually has constrained the deputies' authority. In fact, Carson City presented evidence to the contrary."

Fact : Each year 600,000 inmates are released from state and federal prisons.

Fact: Three hundred and sixty thousand, or 60 percent of inmates coming out of prison, are released automatically at the end of their prison term. One hundred and fifty thousand of them are released with no oversight or supervision.

Fact: Within three years, two-thirds of released inmates will be re-arrested, 30 percent in the first six months, and about 40 percent will return to prison or jail.

Fact: Seventy percent of the inmate population functions at the lowest levels of prose and literacy. Just 60 percent of inmates have a high school diploma or GED, compared to 85 percent of U.S. adults.

Fact: Sixty percent of former inmates are not employed in the legitimate labor market. And a recent survey found that 65 percent of employers would not knowingly hire an ex-offender." John Larivee, *Prisoner Reentry: A public Safety Opportunity*, The Prosecutor (May/June 2003).

When asked if their company had coworker dating policies, 70% of 1,003 employees said no, 17% said yes, and 14% didn't know. Source: Maritz Poll, St. Louis.

Flex time accommodates employer budgets Faced with ever-tightening financial constraints, U.S. employers in growing numbers are instituting flexible time polices as a cost-efficient means to bolster attraction and retention efforts. With many companies unable to increase loyalty through significant pay increases and bonuses, flexible schedules, job sharing and telecommuting have emerged as steadfast economical incentives set forth toward the American workforce. This comes with good reason. A recent Gallop Poll found that 90% of employees consider work/life benefits as important as health insurance. http://www.benefitnews.com/work/

www.benefitnews.com

OTHER CASES

Penn v. United States, No. 02-1731 (8th Cir. April 3, 2003). Penn, a nonIndian living on nonIndian fee land in a reservation, had been fired as a tribal prosecutor, had pending litigation in tribal court, and was involved in another tribal program. A tribal judge issued a "Traditional Custom Restraining Order" requiring Penn to leave the reservation for 30 days. Penn sued the judge and the BIA and county officers who served the order. Acknowledging the questionable legality fo the order, the court held judicial immunity extends to a tribal judge and quasi-judicial immunity extends to the officers when they are acting at the direction of a court.

Pharakhone v. Nissan North American, Inc., No. 01-5955 (6th Cir April 2, 2003). Pharakone took FMLA leave for the birth of a child and worked at his wife's restaurant during the leave, despite a Nissan rule that prohibited employees from working during the leave. He was discharged for a violation of this policy, could not show that taking FMLA leave was a negative factor in Nissan's decision to discharge him, and so could not prove a violation of the FMLA.

Hernandez v. City of Goshen, Nos. 02-3268 & 02-3269 (7th Cir. March 31, 2003). The plaintiffs were victims in a owrkplace violence shooting incident. They alleged that the City of Goshen, through its police department violated their constitutional right to liberty by not acting to prevent the shooting even after receiving a call from the plant manager reporting a threat of violence to plant employees. The court upheld summary judgment in the City's favor: "The critical difference in this case is that the City had no duty to the residents of Goshen to provide a police department whose policy is to investigate threats of violence, even credible ones, made by private persons and reported by private persons. As the Supreme Court held in *DeShaney* and we recently reiterated in *Windle v. City of Marion, Indiana*, 2003 WL 728964, at (7th Cir. 2003), police departments have no constitutional duty to protect private persons from injuring each other, at least where the police department has not itself created the danger."

Delano-Pyle v. Victoria County, Texas, 302 F.3d 567 (5th Cir. 2002). Delano-Pyle was severely hearing impaired. On July 17, he rear-ended a vehicle on a highway in Victoria County and later informed officers of his disability. The officer found two prescription drugs in the car (one Pyle's and one belonging to an uncle), but had no

evidence Pyle had used either medication. The officer turned on his video camera and instructed Pyle (sometimes with his back to Pyle, who could not then read his lips) to perform roadside sobriety tests. Pyle performed the tests, but would take too many steps or make too repetitions. Pyle was mirandized, but did not respond and the officer was not sure he understood before his arrest. He was interrogated and agreed to a blood draw(which proved negative) after six requests and was released on July 19.

Pyle won a $230,000 jury verdict based on ADA and Rehabilitation Act claims. The court held that, unlike § 1983, ADA and RA claims do not require proof of a policymaker, a policy of discrimination, or deliberate indifference. Instead, a municipality is vicariously liable for the acts of any of its employees that 1) discriminate or deny participation in or the benefits of any program or activity of the municipality and 2) that are intentionally discriminatory.

Doe v. United States Postal Serv., 317 F.3d 339 D.C. cir. 2003). Doe missed work for several weeks due to an HIV-related illness. He was informed he would be disciplined unless he completed an FMLA leave form (with supporting documentation) or a medical certificate explaining his illness. He submitted the FMLA form, and his HIV was general knowledge upon his return to work.

The court held that Doe did not have to forego FMLA leave in order to prevent disclosure of his condition, that the USPS had made an employer inquiry into Doe's ability to perform job-related functions by seeking the medical information, that the information was required to be kept confidential under the ADA, and that disclosure allowed Doe to state a claim under the Rehabilitation Act because of the disclosure.

Dwan v. City of Boston, No. 02-1493 (1st Cir. May 27, 2003). Dwan, a police sergeant, twice refused to testify before a federal grand jury about a police misconduct incident, invoking his Fifth Amendment privilege against self-incrimination each time. He was later placed on paid administrative leave for 18 months before reinstatement (and was then denied overtime, special assignments, and a transfer). He then sued alleging violations of his rights.

"Although the Supreme Court has not recently revisited the *Garrity* line of cases, a number of the circuits including this one have focused on the "coercion" issue emphasized by the Court in those cases, making it a claim dependent on such a showing."

"Further, this circuit has held that coercion is lacking so long as the employee was never threatened or forewarned of any sanction for refusing to testify, even though the employee suffers adverse action after-the-fact as a result of refusing to cooperate. Here, no one told Dwan that if he pled the Fifth Amendment before the grand jury, he would be placed on administrative leave. Nor does he allege any regulation or settled practice to that effect."

"Yet it cannot sensibly be the law that administrative measures, although taken in part 'because' an employee pled the Fifth Amendment, are automatically impermissible. Under the case law, a negative inference may be drawn by a public

employer–and adverse action taken–'because of' an employee's refusal to answer questions about job-related misconduct, so long as the inference is plausible and (perhaps) other information also supports the adverse action."

"Dwan also argues that the defendants' purpose in placing him on administrative leave was to coerce him thereafter to abandon his Fifth Amendment rights. There is no evidence of this--and Deputy Superintendent Dowd denied it in his deposition--but to avoid a possible disputed issue of fact, we will assume arguendo that the defendants would have been pleased if, after being placed on administrative leave, Dwan had then cooperated fully with the Department and the grand jury and was able to identify those who had beaten Cox."

"Yet we have just held that the defendants had an objectively reasonable basis for placing Dwan on leave without pay pending investigation, even though this stemmed in part from his refusal to testify; and we have likewise concluded that the limited burden on his Fifth Amendment rights–if it can be regarded as touching upon those rights–was permissible. This being so, it hardly matters whether the defendants hoped that Dwan might in due course decide to cooperate–whether to avoid the investigation, regain active status or for any other reason."

Altman v. City of High Point, No. 02-1178 (4th Cir. May 20, 2003). "This case arises out of several shooting incidents in the City of High Point, North Carolina (the 'City' or 'High Point'). In each incident, a High Point animal control officer shot and killed one or more dogs that were running at large in the city. Plaintiffs, the owners of the animals, brought suit under 42 U.S.C. § 1983, alleging that the officers' actions violated their Fourth Amendment rights. The district court denied the officers' qualified immunity defense, and the officers have appealed that ruling. Their appeal presents a question of first impression in this circuit, namely, whether a privately owned dog falls within one of the classes of property protected by the Fourth Amendment against unreasonable search and seizure. This issue, while ostensibly peripheral as a constitutional matter, is nevertheless of significant importance, and we consider it in depth. As we explain more fully below, we conclude that the dogs at issue in this case do qualify as property protected by the Fourth Amendment and that the officers seized that property. However, because in each instance the seizure involved was reasonable, we conclude that the officers did not violate the plaintiffs' Fourth Amendment rights. Accordingly, we reverse the district court's decision denying summary judgment to the officers and the City of High Point."

When a disaster (like a hurricane) strikes, the military can lawfully support the local authorities in providing disaster assistance. [Posse Comitatus Act] is never triggered because the military is not functioning as a law enforcer. But the concern, especially after 9/11, is 'the tendency to ignore Posse Comitatus restrictions during emergencies (real or simply perceived). Differing views have emerged on whether the restrictions found in the PCA should be scaled back, amended or remain intact. The historical footnotes of the military's role in the 1876 election, however, reaffirms that the role of our country's civil law enforcement

establishment is different and distinct from the role of our country's military establishment." Major Mark Maxwell, *The Enduring Vitality of the Posse Comitatus Act of 1878*, The Prosecutor (May/June 2003).

"The appellant has attempted to distinguish the factual situation in this case from that in *Renfroe v. Higgins Rack Coating and Manufacturing Co., Inc*. (1969), 17 Mich. App. 259, 169 N.W.2d 326. He didn't. We couldn't. Affirmed. Costs to appellee."

Denny v. Radar Industries, Inc., 184 N.W.2d 289 (Mich. App. 1970)

Muckle (Adverb)

Pronunciation: ['mê-kl]

Definition 1: Much, a great many, a large amount; large, great (Scots English).

www.dictionary.com